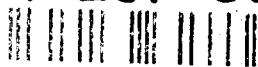


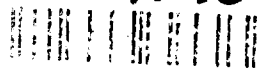
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## Human Resources Division

B-242410

December 21, 1990

The Honorable Andy Jacobs, Jr.  
Chairman, Subcommittee on Social Security  
Committee on Ways and Means  
House of Representatives

Dear Mr. Chairman:

On March 20, 1990, you requested that we review certain productivity initiatives implemented in one of the Social Security Administration's (SSA's) Office of Hearings and Appeals' (OHA's) regional offices. In particular, you asked us to determine whether procedures used by the Chicago Region's chief administrative law judge (ALJ) to decide Medicare Part A appeals were proper under OHA guidelines and the Administrative Procedure Act (APA). You also asked us to identify the impact that including cases decided by the regional chief ALJ and retired ALJs in hearing office productivity statistics had on the statistics and on the distribution of monetary awards in the Chicago Region.

Individuals denied benefits under the Medicare and Social Security programs may appeal such decisions to ALJs in 132 hearing offices around the country. OHA's regional chiefs are responsible for the management of these ALJs. In managing ALJs, OHA must ensure that its supervision does not improperly interfere with the judges' decisional independence. APA provides guidelines for managing the ALJs.

In fiscal year 1989, the Chicago regional chief implemented two management initiatives to reduce backlogs of appeals and increase productivity. He (1) implemented a project to identify and process Medicare Part A appeals that he could decide without a hearing and (2) used retired ALJs to hear appeals in some hearing offices with backlogs of pending appeals.

On June 13, 1990, we testified before the Subcommittee on our preliminary results. On November 13, 1990, we briefed your staff on the results of additional questions you posed during the hearing. This report presents our final results. In summary, we found that the initiatives comply with APA and with OHA guidelines. We found also that including dispositions of the chief and the retired ALJs in hearing office statistics slightly overstated the average production statistics for the region and some hearing offices. However, the only apparent gain from the overstated data was that one hearing office received an additional \$3,529 for

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awards and bonuses to support staff for which it would not have been otherwise eligible.

As OHA studies and redesigns its system of productivity measures for its ALJs, we believe it should ensure that whatever measurement system it designs fairly recognizes the work done by individuals and offices. In the interim, we believe that when calculating the productivity of its hearing offices, OHA should count regional chiefs and any retired ALJs as resources for those hearing offices that received credit for their dispositions.

We performed our work from May to September 1990 at OHA headquarters, the Chicago Regional Office, and five hearing offices in the region. The work was done in accordance with generally accepted government auditing standards.

As agreed, we did not obtain written comments on a draft of this report. However, we did discuss its contents with SSA officials and incorporated their views where appropriate.

We are sending copies to interested congressional committees; the Secretary of Health and Human Services; the Director, Office of Management and Budget; the Commissioner of Social Security; and other interested parties, and we will make copies available to others upon request.

Please call me on (202) 275-5365 if you or your staff have any questions about this report. Other major contributors are listed in appendix II.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Gregory J. McDonald for".

Gregory J. McDonald  
Associate Director,  
Income Security Issues



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## Abbreviations

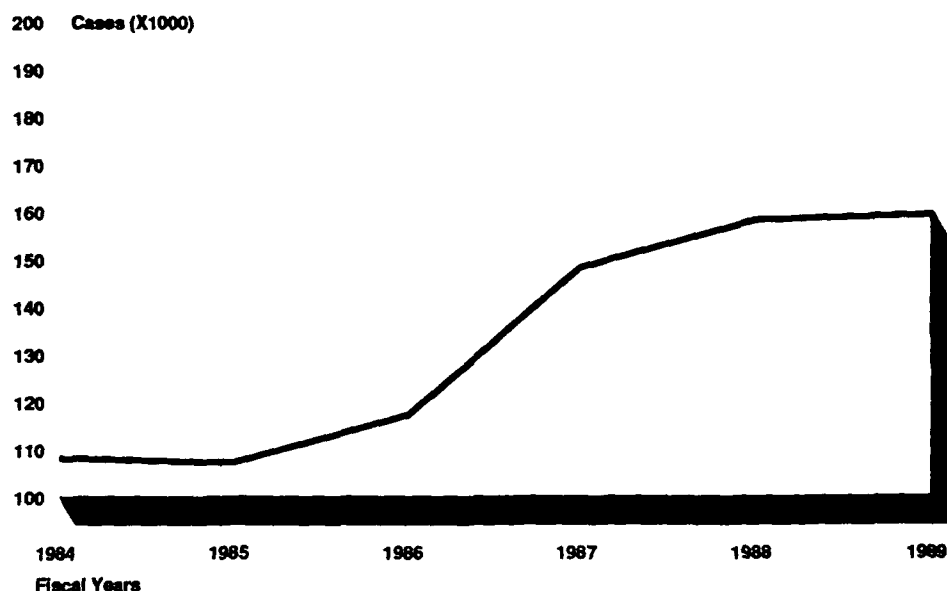
APA	Administrative Procedure Act
ALJ	administrative law judge
GAO	General Accounting Office
HCFA	Health Care Financing Administration
OHA	Office of Hearings and Appeals
SSA	Social Security Administration

# Social Security: Production Initiatives in OHA's Region V Comply With Law and Guidelines

## Background

Individuals may appeal the denial of their applications for benefits under the Medicare and Social Security programs to administrative law judges (ALJs) at 132 hearing offices throughout the country. In recent years, the number of appeals to ALJs have exceeded the number of ALJ decisions, resulting in backlogs of pending cases. (See fig. 1.)

**Figure 1: Number of Appeals Awaiting ALJ Hearing (Fiscal Years 1984-89)**



Source: OHA Key Workload Indicators Report (1990).

The Social Security Administration's Office of Hearings and Appeals (OHA) manages the ALJs.<sup>1</sup> OHA's hearing offices are divided into 10 regions headed by seven regional chief ALJs. Although organizational structures vary among the regional offices, each performs essentially the same management, administrative, and program functions. Regional chief ALJs provide direction and guidance to the hearing offices. They also monitor and coordinate the offices' activities and performance, and serve as liaisons with OHA headquarters.

In managing ALJs, OHA must ensure that its supervision does not improperly interfere with the decisional independence of ALJs. The Administrative Procedure Act (APA) provides guidelines for managing ALJs. APA

<sup>1</sup>The Health Care Financing Administration (HCFA) administers the Medicare program. It uses SSA's ALJs to decide entitlement for cases involving appeals of initial entitlement decisions.

grants ALJs certain exemptions from normal management controls. However, ALJs are agency employees and, as such, must adhere to agency rules and regulations, including those pertaining to appropriate administrative supervision and general office management. OHA management, however, may not interfere with an ALJ's ability to conduct full and impartial hearings.

The APA allowed OHA managers to establish performance goals and undertake initiatives to increase productivity as long as they did not interfere with the decisional independence of ALJs. During fiscal year 1989, SSA used a hearing office monthly goal of 37 dispositions per ALJ. The goal closely correlated with the number obtained by dividing OHA's overall monthly workload by the number of full-time ALJs.

In our earlier report<sup>2</sup> on the effect of OHA productivity initiatives, we identified the need for OHA to study the relationship between performance goals and the quality and quantity of decisions. We pointed out that without such a study, it is difficult to determine the point at which an increase in production may adversely affect the quality of decisions.

In fiscal year 1989, the chief ALJ for Region V (Chicago) initiated two projects to increase productivity and reduce the backlog of appealed cases. He (1) set up a project to identify and process Medicare Part A appeals that he could approve without a hearing and (2) used retired ALJs to hear appeals in selected hearing offices.

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<sup>2</sup>Social Security: Many Administrative Law Judges Oppose Productivity Initiatives (GAO/HRD-90-15, Dec. 7, 1989).



Figure 2

## GAO Objectives

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Determine if procedures used  
by Chicago regional chief  
judge to decide Medicare  
appeals were proper

Identify effects of chief ALJ  
and retired ALJ decisions on:

- Regional workload statistics
- Hearing office production
- Allocation of award monies

---

## Objectives

The Chairman, Subcommittee on Social Security, House Committee on Ways and Means, requested that we review the Chicago regional chief's productivity initiatives. Specifically, the Chairman asked us to

- determine whether procedures the regional chief used to decide Medicare Part A appeals were allowed under OHA regulations and the APA and
- identify the impact dispositions by the chief and the retired ALJs had on (1) regional Medicare workload statistics, (2) hearing offices' production figures, and (3) the allocation of performance award monies.

Figure 3

## GAO Scope and Methodology

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- Analyzed data from OHA management information systems
- Interviewed officials at OHA, HCFA, and Medicare intermediary
- Interviewed ALJs, attorneys, and administrative staff in selected hearing offices

---

### Scope and Methodology

To obtain information pertaining to the activities surrounding the chief's initiatives, we

- visited and reviewed administrative and case documents at OHA and HCFA headquarters, the Chicago Regional Office, and its Chicago West, Chicago South, Chicago Downtown, Evanston, and Lansing hearing offices;
- analyzed data from OHA's management information systems, including (1) its Key Workload Indicators report, (2) hearing office monthly activity reports, and (3) hearing office tracking system reports;

- 
- interviewed 14 ALJs, 7 attorneys, and 7 administrative staff knowledgeable about the activities surrounding the initiatives; and
  - interviewed officials from Blue Cross of Iowa, the intermediary responsible for the Medicare Part A cases decided by the regional chief.

We performed our work from May through September 1990 in accordance with generally accepted government auditing standards. We did not, however, assess the quality of decisions rendered by the regional chief.

Figure 4

## GAO Chief's Initiatives Are Allowed Under Guidelines and APA

- Procedures used to screen, assign, review, and decide Medicare Part A appeals are in compliance with APA
- Acceptable for ALJs to delegate some responsibilities to subordinates
- Managers can use retired ALJs to hear backlogged appeals

### Chief's Initiatives Are Allowed Under Guidelines and APA

The production initiatives carried out by the Chicago regional chief were permissible management actions. The procedures used to select, assign, review, and decide Medicare Part A appeals cases were in compliance with OHA's guidelines and did not violate APA. Also, using retired ALJs to help alleviate the backlog of cases, resulting in more timely decisions, was an acceptable management practice.

Early in fiscal year 1989, several field offices in the Chicago Region were experiencing growing backlogs of cases. This was particularly true in the Evanston office, which had the region's largest backlog (as high

as 533 pending cases per ALJ). To alleviate the Evanston backlog and provide claimants with more timely decisions, the regional chief began a project to decide many of these appeals himself.

Cases not yet assigned to ALJs were pulled from the pending workload by the Evanston administrative staff and sent to the regional office. There, the cases were screened by the chief and attorneys to determine if a decision could be made without a hearing.<sup>3</sup> Cases for which no hearing appeared necessary were assigned to the regional chief.<sup>4</sup> The other cases were returned to Evanston for regular assignment to ALJs in that office.

To expedite the decision process, the regional chief delegated some of his responsibility to staff. He specifically delegated responsibilities for reviewing the cases, drafting decisions, and signing some of the final decisions. The chief told us that he reviewed the drafted decisions and approved all final decisions, even in instances where he did not sign them. In discussions with subordinates involved in the project, we found no information that contradicted the chief's description of the procedures, nor did we find other evidence suggesting that those cases were handled in any other manner.

Under OHA guidelines and APA, cases are generally to be assigned as received to available ALJs at hearing offices. This procedure need not be inflexible, however, and change may be instituted to improve the timeliness of claimants' appeals and eliminate backlogs of cases. However, cases may not be reassigned if it would leave ALJs idle. This was not a problem with the reassignment of cases from the Evanston office. ALJs in the Evanston hearing office had large pending workloads. It is also acceptable for ALJs to delegate, to qualified subordinates, the reviewing and drafting of decisions. In special situations ALJs may also delegate the signing of their decisions as long as they approve the decision, as occurred in the Evanston cases.

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<sup>3</sup>Medicare procedures allow an ALJ decision without a hearing if (1) the claimant requests that no hearing be held or (2) the data in the file support a decision in favor of the claimant.

<sup>4</sup>These cases involved only appeals that, the regional chief and the attorneys believed, could be decided in favor of the claimant.

Figure 5

## GAO Chief's Dispositions Were Unique

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- Chief decided all 839 appeals without a hearing
- Region had nearly twice as many Medicare decisions without a hearing as did the nation
- All of chief's decisions were favorable to claimants
- Region's approval rate 18 percent higher than nation's

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### Chief's Dispositions Were Unique

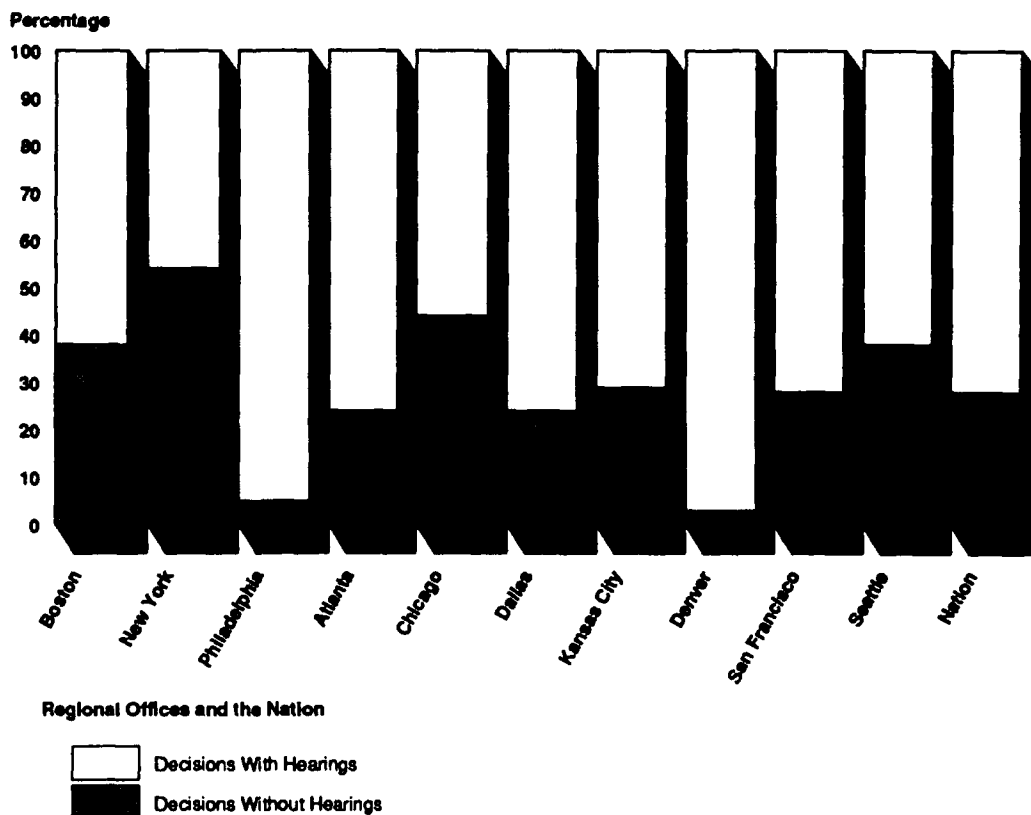
The Chicago regional chief's handling of a large number of Medicare Part A appeals resulted in differences between that region's and the other regions' Medicare workload statistics. During fiscal year 1989, the regional chief approved 839 Medicare appeals without a hearing. These represented about 80 percent of the region's Medicare cases that were decided without a hearing. The Chicago Region also had a higher percentage (44 percent) of Medicare cases<sup>5</sup> decided without a hearing than

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<sup>5</sup>In Chicago, ALJs made 2,376 Medicare Part A decisions. Only 6 of these decisions were made by retired ALJs.

the national average. Nationally, ALJs made 28 percent of their Medicare decisions without a hearing. (See fig. 6.)

Figure 6: Percentage of Medicare Part A Decisions With and Without Hearings (Fiscal Year 1989)

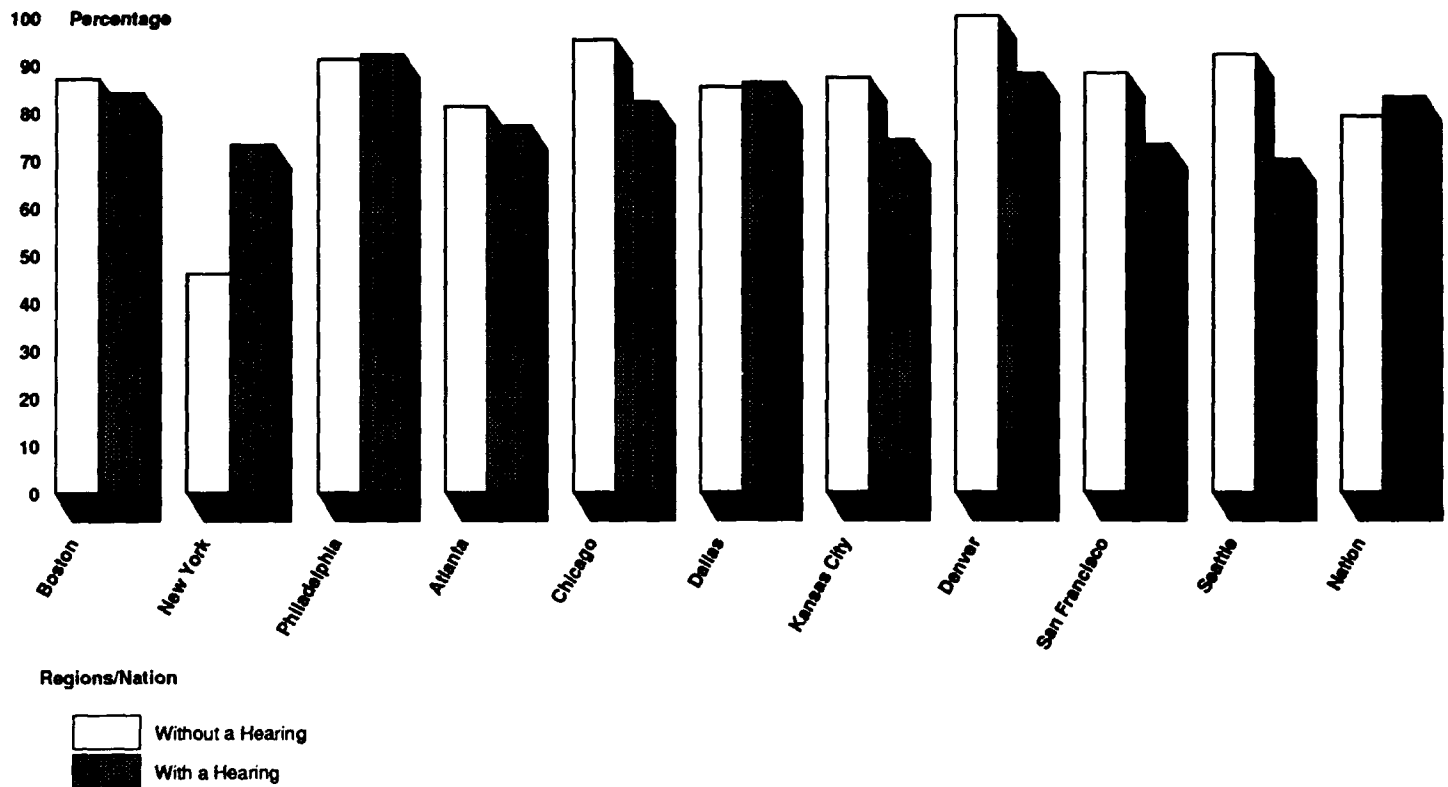


Source: OHA management information system

As stated earlier, the Medicare Part A cases decided by the regional chief were screened to select only cases that the he and staff attorneys believed could be decided in favor of the claimant without a hearing. We interviewed those who did the screening, and they saw no problems with this approach. These favorable decisions accounted for the region's 95-percent approval rate in favor of the claimant for decisions without a hearing, compared to a 79-percent approval rate nationwide. (See fig. 7.)

Social Security: Production Initiatives in  
OHA's Region V Comply With Law and  
Guidelines

Figure 7: Approval Rate for Medicare Decisions With and Without Hearings (Fiscal Year 1989)



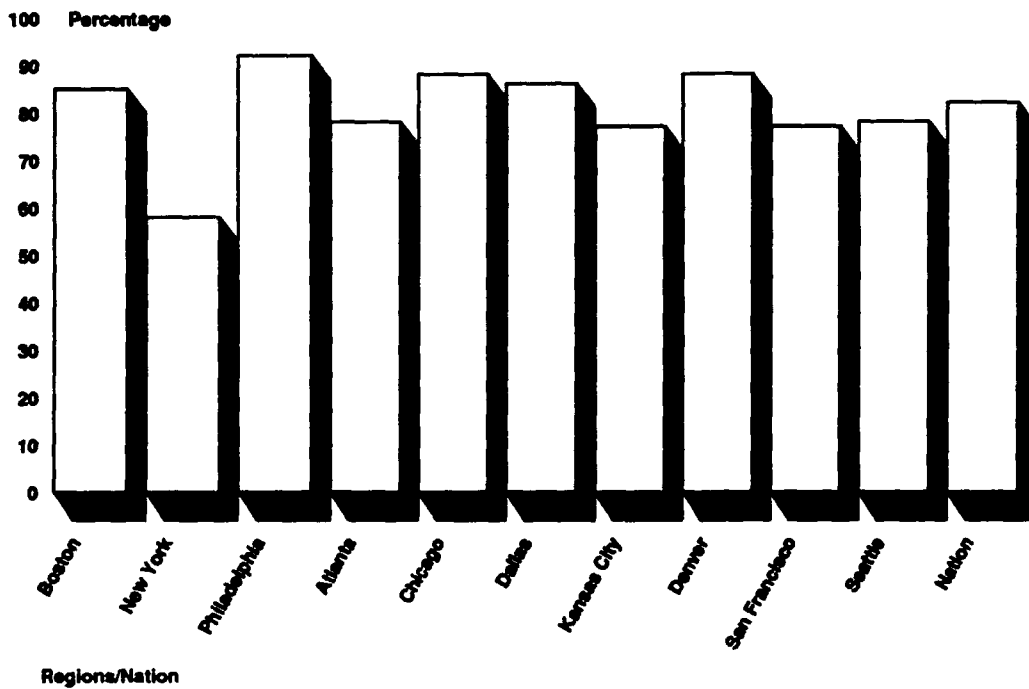
Source: OHA management information system

Even with Chicago's high approval rate for Medicare decisions without a hearing, the region's overall approval rate for Medicare appeals was consistent with other offices and the national average. In fiscal year 1989, ALJs rendered 13,700 Medicare Part A decisions. Overall, ALJs allowed 82 percent of their decisions. (See fig. 8.)



**Social Security: Production Initiatives in  
OHA's Region V Comply With Law and  
Guidelines**

**Figure 8: Overall Approval Rate for Medicare Decisions (Fiscal Year 1989)**



Source: OHA management information system.

Figure 9

## GAO Hearing Office Productivity Overstated Slightly

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- Procedures used to compute average dispositions per ALJ resulted in overstated figures
- Chief and retired ALJ dispositions account for 3% of region's total
- 12 of 19 hearing offices received credit for decisions rendered by chief ALJ or retired ALJs

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### Hearing Office Productivity Overstated Slightly

OHA's procedures for calculating average dispositions per ALJ by hearing office include dispositions by regional chiefs and retired ALJs, but do not count these judges as resources assigned to the hearing office. Therefore, when these cases are allocated, the average dispositions per ALJ for a given hearing office may be overstated. The dispositions by the Chicago regional chief and retired ALJs, however, had little effect on the region's overall productivity statistics, and only slightly affected individual hearing office computations of average dispositions per ALJ. Table 1 shows how the dispositions by the chief and retired ALJs contributed to the monthly ALJ averages for the Chicago regional hearing

offices. The Evanston office, where the cases originated, benefited the most, showing an increase in its monthly average of 6.3 cases.

**Table 1: Effect of Dispositions by the Chief ALJ and Retired ALJs on Hearing Office Average Dispositions Per ALJ (Fiscal Year 1989)**

Hearing office	Average monthly dispositions	Contribution to dispositions by the chief and retired judges
Chicago (Downtown)	32.1	3.7
Chicago (South)	30.1	0
Chicago (West)	39.2	3.2
Cincinnati	29.6	0.9
Cleveland	37.0	0.1
Columbus	34.5	1.5
Dayton <sup>a</sup>	40.2	0
Detroit	34.2	0.6
Evanston	39.7	6.3
Evansville <sup>a</sup>	35.6	0
Flint <sup>a</sup>	33.5	0
Ft. Wayne <sup>a</sup>	36.3	0
Grand Rapids <sup>a</sup>	40.3	0
Indianapolis	30.9	0.6
Lansing	26.7	0.3
Milwaukee <sup>a</sup>	35.3	0
Minneapolis	32.1	0.3
Oak Park	35.9	2.7
Peoria	35.1	1.2

<sup>a</sup>Hearing offices not affected by the allocation of cases.

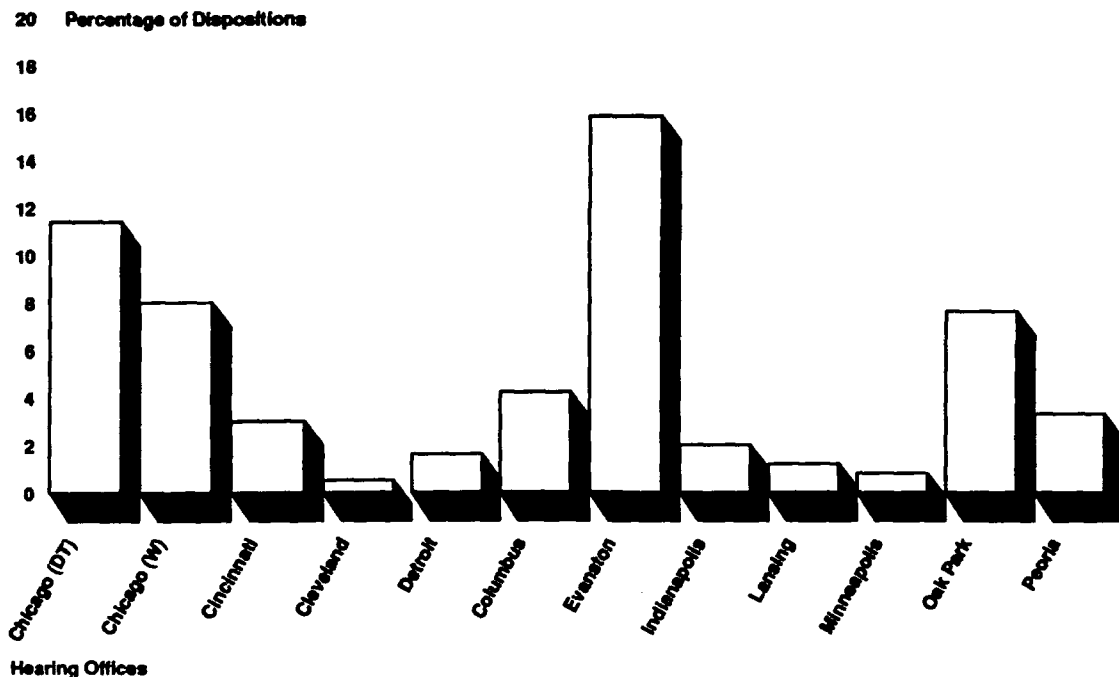
Sources: OHA management information systems (fiscal year 1989)

Dispositions by the chief and retired ALJs in fiscal year 1989 were 1,750 (about 3 percent) of the region's total of 52,126 cases decided by ALJs. Retired ALJs' dispositions were counted in the six hearing offices where the cases were filed and heard. The chief's dispositions were credited to 11 field offices by the regional office manager, although all these cases were filed in the Evanston office. The office manager said she allocated the cases based on her judgment and knowledge of how much work each field office contributed to the completion of the cases.<sup>6</sup> In total, 12 of the 19 field offices in the region received some credit for dispositions by the chief or retired ALJs.

<sup>6</sup>Case work performed by the field offices included work by staff attorneys, decision writers, and clerical support.

Figure 10 shows the effect dispositions rendered by the regional chief and retired ALJs. Only the Evanston and Chicago Downtown hearing offices had significant disposition increases, 16 and 11 percent, respectively. The other 10 offices' dispositions increased by 8 percent or less. Appendix I shows the month-by-month impact that dispositions rendered by the chief and retired ALJs had on the 12 hearing offices' monthly average dispositions per ALJ.

Figure 10: Impact of Chief and Retired ALJ Dispositions on Hearing Office Productivity (Fiscal Year 1989)



Note: Includes only offices credited with dispositions by chief or retired ALJs.

Source: OHA management information system.

Figure 11

## **GAO    Inflated Average Dispositions Had Little Effect on Awards**

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- Chicago Region had about \$250,000 for awards in fiscal year 1989
- Only \$32,681 of the award money was affected
- 7 of 8 hearing offices would have qualified for award money without chief and retired ALJs' dispositions

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### **Inflated Average Dispositions Had Little Effect on Awards**

Management used average dispositions per ALJ to rank hearing offices for allocating some award money. However, the overstated average disposition figures had little effect on the distribution of award money.

In fiscal year 1989, \$248,996 was distributed in the Chicago Region for awards and bonuses. This amount was divided among three award and bonus categories or pools. A \$217,870 pool was available for employees (grades 12 and lower) assessed under the Employee Performance Management System. Another \$10,019 pool was available to employees

(grades 13 and above) who were assessed under the Employee Management Recognition System. The other \$21,107 was available for spot awards for all employees. ALJs are not eligible for awards.

Regional chief and retired ALJs' dispositions during fiscal year 1989 affected only the distribution of monies available for Employee Performance Management System awards, and the effect on this distribution was minimal. Eighty-five percent (\$185,189) of this award money was allocated to hearing offices based on their staffing (percentage of the region's grades 12 and lower staff they had). The remainder (\$32,681) was allocated only to the hearing offices that met or exceeded the 37-case-per-ALJ disposition goal for at least 8 months during the fiscal year.

Eight hearing offices met the monthly goal of 37 dispositions per ALJ for 8 months. Only the Evanston hearing office, which received \$3,529 of the \$32,681, would not have met the goal without the dispositions of the regional chief and the retired ALJs.

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## Conclusions

Production initiatives by the Chicago Region's chief ALJ during fiscal year 1989 were permissible management actions. Procedures used to decide Medicare Part A appeals were in compliance with OHA's guidelines and did not violate APA. However, OHA procedures for calculating average dispositions for hearing offices inflated the average dispositions per ALJ at some hearing offices (those using the chief and retired ALJs to decide cases). Management used the inflated average dispositions per ALJ to rank hearing offices for allocating some award money, but the overstated figures had little effect on the distribution of award money.

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## Recommendation

To fairly recognize the work done by individuals and offices, we recommend that the Commissioner of Social Security direct OHA, when calculating the productivity of its hearing offices, to count the regional chief and retired ALJs as resources for the hearing offices credited with their cases until such time as a redesigned system of productivity measures is implemented.

# Monthly Effect of Decisions Issued by Chicago Region's Chief Judge and Retired Judges During Fiscal Year 1989

Month	Hearing office	Total decisions	Chief & retired judges	Impact on average cases per judge
October	Chicago (DT)	303	39	3.5
	Chicago (W)	231	9	1.5
	Oak Park	240	4	0.5
November	Chicago (W)	172	2	0.3
	Chicago (DT)	266	4	0.4
	Oak Park	261	12	1.5
December	Chicago (W)	225	6	1.0
	Chicago (DT)	282	3	0.3
	Oak Park	362	62	7.8
January	Chicago (W)	222	5	0.8
	Chicago (DT)	283	3	0.3
	Cleveland	570	6	0.5
	Oak Park	308	41	5.9
February	Chicago (W)	234	12	2.0
	Chicago (DT)	286	55	5.5
	Cleveland	546	5	0.4
	Evanston	169	8	1.6
	Oak Park	368	98	12.3
March	Chicago (W)	208	13	2.1
	Chicago (DT)	404	41	4.6
	Evanston	190	32	6.4
	Oak Park	315	35	4.4
	Peoria	199	9	1.5
	Detroit	302	33	4.1
April	Chicago (W)	250	28	4.7
	Chicago (DT)	289	47	5.2
	Cleveland	457	4	0.3
	Detroit	269	3	0.4
	Evanston	181	32	6.4
	Indianapolis	348	33	3.3
	Oak Park	262	2	0.3
	Peoria	195	8	1.6
	Minneapolis	266	9	1.3
	Chicago (W)	231	5	0.8
May	Chicago (DT)	317	26	2.9
	Cincinnati	212	17	2.8
	Evanston	247	72	14.4
	Indianapolis	355	29	2.9

(continued)

**Appendix I**  
**Monthly Effect of Decisions Issued by**  
**Chicago Region's Chief Judge and Retired**  
**Judges During Fiscal Year 1989**

Month	Hearing office	Total decisions	Chief & retired judges	Impact on average cases per judge
June	Minneapolis	263	10	1.4
	Oak Park	284	2	0.3
	Peoria	191	5	1.0
	Chicago (W)	270	54	9.0
	Chicago (DT)	348	25	2.8
	Cincinnati	264	16	2.7
	Columbus	312	56	8.0
	Evanston	281	110	22.0
	Indianapolis	351	6	0.6
	Minneapolis	266	5	0.7
July	Detroit	365	17	1.9
	Chicago (W)	258	27	4.5
	Chicago (DT)	212	48	5.3
	Cincinnati	145	19	3.8
	Columbus	167	11	1.6
	Detroit	299	1	0.1
	Evanston	197	19	3.1
	Indianapolis	260	6	0.6
	Peoria	186	3	0.5
August	Chicago (W)	234	10	1.7
	Chicago (DT)	351	65	7.2
	Cincinnati	143	5	1.0
	Cleveland	407	1	0.1
	Columbus	264	36	5.1
	Detroit	331	1	0.1
	Evanston	252	49	8.2
	Peoria	199	12	2.0
September	Chicago (W)	296	56	9.3
	Chicago (DT)	345	66	7.3
	Cincinnati	114	4	0.8
	Columbus	315	17	2.4
	Evanston	267	74	12.3
	Lansing	137	19	3.8
	Oak Park	255	1	0.1
	Peoria	197	41	6.8



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